



\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RFA 672/2019, CM APPL. 33104/2019, CM APPL. 40511/2025 &
CM APPL. 40512/2025

ASHWANI KUMAR SRIVASTAVA

.....Appellant

Through: Mr. Sarvesh Singh, Mr. Rajesh
Kumar and Mr. Deepak Chand,
Advocates
Mob: 9911004257
Email: sarveshsingh527@gmail.com

versus

AKHILESH SRIVASTAVA

.....Respondent

Through: Mr. Jai Wadhwa and Mr. Ronak
Karanpuria, Advocates
Email: A1lawrooms@gmail.com
Mob: 9599651116

CORAM:**HON'BLE MS. JUSTICE MINI PUSHKARNA****JUDGMENT**

%

10.09.2025

1. The present appeal has been filed under section 96 of the Code of Civil Procedure, 1908 (“**CPC**”), against the judgement and decree dated 28th May, 2019, passed by the Court of Additional District Judge – 03, Shahdara, Karkardooma Courts, Delhi, in *Civil Suit No. 547/2016*. The suit was filed by the appellant/plaintiff seeking possession, mesne profits and permanent injunction, in relation to property bearing no. *B-200, Gali No. 6, Hardev Puri, Delhi – 110093* (“**subject property**”), against the respondent, who is his brother. The appellant claimed to have purchased the subject property from his mother, i.e., Shakuntala Srivastava.



2. The Ld. Trial Court, by way of the impugned judgement dated 28th May, 2019, dismissed the suit of the appellant herein, on the ground that the plaintiff/appellant had failed to discharge the burden of proving his ownership with respect to the subject property.

3. The case, as put forth by the appellant, is as follows:

3.1 The appellant *bonafidely* purchased the subject property from Smt. Shakuntala Srivastava, his mother, by virtue of a Sale Deed dated 27th October, 1995, and for a valid sale consideration. The appellant is residing on the first floor of the subject property, and the respondent, i.e., brother of the appellant, is residing on the ground floor of the subject property as a licensee.

3.2 The mother of the appellant has transferred the subject property to the appellant by way of the Sale Deed dated 27th October, 1995, for consideration of Rs. 75,000/-. Thus, the appellant is the absolute owner of the property.

3.3 At the request of the respondent, the appellant allowed his brother to reside on the ground floor of the subject property, with the surety from the respondent that as and when it is required, the respondent will vacate the same. Furthermore, the electricity charges were being paid by the appellant itself, since the purchase of the property by the appellant.

3.4 The documents which show the chain of the subject property, except the Sale Deed dated 27th October, 1995, were kept in the wooden almirah on the ground floor, and the said chain has been stolen by the respondent, and to this effect, the appellant had even filed a complaint before the police station concerned.

3.5 The appellant by way of legal notice dated 10th October, 2012,



purportedly terminated the license of the respondent for the subject property, and sought the respondent to vacate and hand over the possession of the subject property.

3.6 A written complaint dated 11th October, 2012 was filed by the appellant in the Police Station, M.S. Park, Delhi, bringing forth the facts that the respondent has failed to vacate the subject property and has stolen the chain of documents for the subject property. Thereafter, the appellant again issued another legal notice dated 13th October, 2012 and asked the respondent again to vacate the subject property on 20th November, 2012. Therefore, the respondent is living in the subject property unauthorizedly, for which the respondent is liable to pay the damages @ 5000/- per month along with other charges, as per prevailing market rate since 15th November, 2012.

3.7 Since, the respondent did not vacate the subject property, *Civil Suit No. 547/2016*, was filed seeking possession, mesne profits and permanent injunction, in relation to the ground floor of the subject property.

3.8 The Trial Court ignored the evidence led by the appellant and dismissed the suit *vide* judgment and decree dated 28th May, 2019. Hence, aggrieved by the same, the present appeal has been filed by the appellant.

3.9 The Trial Court failed to appreciate that the appellant proved the Sale Deed in his favour by summoning the concerned officials from Registrar Office. The burden to prove the fact that the said Sale Deed in favour of the appellant, was never executed or was forged, was on the respondent. However, the respondent did not summon the mother of the parties for evidence and did not rebut the Sale Deed by any other mode.

3.10 During the pendency of the present appeal, the appellant filed an



application bearing no. *CM. APPL. 40511/2025*, praying for allowing the appellant to place on record the original Sale Deed dated 27th October, 1995, purportedly executed by his mother in his favour. In the said application, it is submitted that the appellant was not in possession of the Sale Deed dated 27th October, 1995, on account of the appellant having taken a loan and mortgaging the subject property. Therefore, the appellant was unable to produce the original Sale Deed as evidence before the Trial Court. Further, it is only in the second week of December, 2019, that the appellant repaid his loan and received the said Sale Deed. Therefore, non-filing of the Sale Deed before the Trial Court was neither deliberate nor intentional on part of the appellant.

3.11 In application no. *CM. APPL. 40511/2025*, the appellant has also put forth a justification to there not being any signature and thumb impression of the executant/seller on the last page of the Sale Deed dated 27th October, 1995, by submitting that, mistakenly, the deed writer forgot to obtain the thumb impressions and signature of the executant/seller on the last page of the photocopy that was placed before the Trial Court. Therefore, the said anomaly was a clerical error.

4. *Per Contra*, the case as put forth by the respondent, is as follows:

4.1 The Sale Deed dated 27th October, 1995 is a forged and fabricated document. Further, the appellant has misled this Court as the Sale Deed placed before the Trial Court and the Original Sale Deed placed before this Court, have several inconsistencies when put to comparison.

4.2 The respondent has been in possession of the ground floor of the subject property since inception, and was living with the mother, i.e., Shakuntala Srivastava, whereas, the appellant has not been living in the



subject property since 1998.

4.3 The appellant has alleged that the respondent was his licensee, however, the appellant has failed at all stages to show any License Agreement to that effect. Furthermore, the appellant has not proved the Sale Deed in his favor, and the same is in doubt. Therefore, on account of the appellant being unable to prove his ownership, there exists no case in favour of the appellant.

4.4 Smt. Shakuntala Srivastava, i.e., Mother of the appellant and respondent, who is said to be the alleged seller/executant of the purported Sale Deed in favour of the appellant, was never called by the appellant/plaintiff, to be examined before the Trial Court. Further, the attesting witness to the Sale Deed was also never called for examination, to prove the validity of the alleged Sale Deed dated 27th October, 1995.

5. Upon considering the pleadings, documents, evidence on record, and oral submissions made before this Court on behalf of the parties, this Court proceeds to deal with the present matter.

6. The appellant filed a suit for possession, mesne profit and permanent injunction against the respondent, his brother, alleging that the appellant was the owner of the subject property, having purchased the same from their mother, *vide* registered Sale Deed dated 27th October, 1995 for a sum of Rs. 75,000/-, paid in cash. The appellant further alleged that he was residing on the first floor of the subject property, while he permitted the respondent, being his real brother, to live on the ground floor of the subject property as a licensee. Since the respondent refused to vacate the premises, the appellant filed the suit.

7. In the suit, the Trial Court framed the following issues:



“xxx xxx xxx

1. Whether the plaintiff proves that he is owner of the suit property and that the ground floor portion was given under license to the defendant? (OPP)

2. Whether the plaintiff proves that the defendant's license is terminated and defendant is liable to be evicted from the ground floor portion? (OPP)

3. Whether the defendant proves that the property belongs to his mother and he 'is residing in his own capacity with his mother in the ground floor portion and thus not liable to be evicted? (OPD)

4. Relief.

xxx xxx xxx”

8. Before the Trial Court, the appellant did not produce the original Sale Deed dated 27th October, 1995, on which the appellant had placed reliance to prove his ownership of the subject property. However, he produced a Lower Division Clerk (“LDC”), Mr. Avtar Singh from the Sub-Registrar Office, as PW 2, to prove the Sale Deed and that the same was registered on 16th May, 1996. As per the appellant, he had taken a friendly loan from a third party and had mortgaged the said original Sale Deed, which was never returned by the said third party, on account of which, the original Sale Deed could not be produced.

9. Though PW 2 appeared from the Sub-Registrar Office and deposed that the Sale Deed dated 27th October, 1995 was registered on 16th May, 1996, it has clearly come in the deposition of the said witness that only the first three pages of the said Sale Deed bears the signature and thumb impression of Smt. Shakuntala Devi, i.e., mother of the parties. The last page of the Sale Deed did not bear any signature/thumb impression of the party. Further, the said witness further deposed that on the photograph of the appellant herein, signatures were put after erasing by fluid. The deposition



of PW 2, Shri Avtar Singh, LDC, Sub-Registrar Office, Seelampur, is reproduced as under:

“xxx xxx xxx

CS No, 212/13

09-09-2015

PW2 Statement of Sh. Avtar Singh, LDC, Sub-Registrar Office, Seelampur, DC Office, Nand Nagar, Delhi (Recalled for further cross examination after 19-2-2015)

On SA

x x x x By Ms. Shalu Jain, Ld, Counsel for defendant.

I am the summoned witness and have brought the summoned record of sale deed dated 27-10-1995. Copy of which is already on record and the same is Ex. PW1/B. It is correct that at the time of registration of the sale deed both the parties must be present i.e., seller and purchaser have to present before the concerned Sub-Registrar. I do not have personal knowledge regarding the signature of both parties on the sale deed. The original copy of the registered document had been given to the purchaser.

..... It is correct that the last page of the sale deed did not bear any signature of the party. It is correct that on photographs of male signatures was put after erasing by fluid at point B. *The said document was registered on 16-5-1996. It is correct that the said document neither executed nor registered in my presence. It is wrong to suggest that the said document was not registered in the office of Sub-Registrar. It is wrong to suggest that Shakuntanla Devi did not come in the office for the registration of the sale deed. It is wrong to suggest that the document Ex. PW1/B are different from the record brought by me.*

xxx xxx xxx”

(Emphasis Supplied)

10. The appellant also during the course of his examination before the Trial Court admitted that the Sale Deed produced before the Trial Court did not bear signature of his mother on the last page. The deposition of appellant before the Trial Court in this regard, is reproduced as under:

“xxx xxx xxx

It is incorrect to say that I was not self employed and that I had no



earnings at that time of sale deed. **It is true that Ex. PW-1/B does not bear the signature of my mother on the last page** (The discrepancies in the document may be pointed out by the defence at the time of final arguments since the documents speaks itself.

I have lodged the complaint with regard to the theft mentioned in para No. 5 of my affidavit and I have produced documents also. It is incorrect to say that the documents do not relate to the said. It is incorrect to say that no sale deed was executed and that is why, I did not file the proper chain of documents.

There is no power supply to the suit property at present. It is incorrect to say that I am deposing falsely.

xxx xxx xxx”

(Emphasis Supplied)

11. Thus, it is manifest that the last page of the Sale Deed did not contain the thumb impression or signature of Smt. Shakuntala Devi. Therefore, the said alleged Sale Deed, even though shown to be registered, was not a proper instrument, and validity of which, could not be presumed. This is especially so, when it has come on record that Smt. Shakuntala Devi, mother of the parties, who allegedly executed Sale Deed in favour of the appellant, had herself filed a suit for possession against the appellant herein. Submissions in this regard, as recorded in the impugned judgment, are reproduced as under:

“xxx xxx xxx

9. In reply to this, counsel for defendant pointed out towards para 3 of plaint. Ld. Counsel for defendant also pointed out towards the cross examination of PW-1 that last page of sale deed Ex.PW1/A does not bears the signature of executor/mother of the parties and no satisfactory answer is given on behalf of plaintiff on this point. It is also submitted on behalf of defendant that plaintiff was not able to collect the required money for execution of the sale deed in his favour. **It is also submitted on behalf of defendant that mother of the parties has also filed a suit for recovery regarding the property in question.** It is further submitted on behalf of defendant that no satisfactory answer is given on behalf of plaintiff for not producing the original sale deed.

xxx xxx xxx”

(Emphasis Supplied)



12. In his cross examination, the appellant herein admitted that his mother filed a suit against him. Deposition of appellant as PW 1 during his cross examination, is reproduced as under:

“xxx xxx xxx

*It is incorrect to say that my mother did not execute any sale deed in my favour. **It is true that my mother had filed a suit against me.** It is true that I have not filed the original sale deed. It is incorrect to say that I was major at the time of the sale deed. It is incorrect say that my DOB is 04/08/1980. I took a driving licence which I have lost. My D.O.B. according to D.L. is 20.04.1974.*

xxx xxx xxx”

(Emphasis Supplied)

13. The appellant did not produce his mother as witness during the course of the trial, nor produced any of the attesting witnesses, who allegedly signed the said Sale Deed, or were present as attesting witnesses, when the Sale Deed was being executed or signed. Furthermore, PW 2, i.e., Avtar Singh, Sub-Registrar also deposed to the effect that he was not present when the Sale Deed in question was executed by the parties. Therefore, the reliance on the deposition of the Sub-Registrar by the appellant, to prove the validity of the Sale Deed, who admittedly himself, was not present when the said Sale Deed was being executed, is futile and does not establish the fact of execution of the alleged Sale Deed.

14. Thus, when doubt had been created as to the veracity of the Sale Deed executed by Smt. Shakuntala Devi in the absence of her thumb impression or signature on the last page of the said Sale Deed, in order to dispel any doubt, the appellant was enjoined upon to produce cogent evidence to establish the veracity and credibility of the said Sale Deed, which the appellant failed to do.

15. It is to be noted that though it was the case of the appellant that the



original Sale Deed had been mortgaged with a third person in *lieu* of a loan having been taken from him, the said person was never called as a witness before the Trial Court to produce the original Sale Deed. It is only during the course of pendency of the present appeal that application no. *C.M APPL. 40511/2025*, has been filed by the appellant under Order XLI Rule 25 and 27 of Code of Civil Procedure, 1908 (“CPC”), to produce the original Sale Deed as additional evidence before this Court.

16. It is trite law that it is not permissible to take on record any additional evidence without following the procedure under Order XLI Rule 27 of CPC (*See: H.S. Goutham Versus Rama Murthy and Another, (2021) 5 SCC 241, Para 37*). Thus, it would be apposite to reproduce Order XLI Rule 27 of CPC in this regard, which reads as under:

“xxx xxx xxx

27. *Production of additional evidence in Appellate Court.*—(1) *The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—*

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

[(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced or witness to be examined.

(2) Whenever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

xxx xxx xxx”

(Emphasis Supplied)



17. Perusal of the said provision brings forth that it is a pre-requisite condition under Order XLI Rule 27 of CPC for bringing on record any document for additional evidence, that the same is produced after exercise of due diligence on part of the party seeking to bring on record the additional evidence, especially, at a belated stage. Thus, the Supreme Court in the case of *Union of India Versus Ibrahim Uddin and Another*, (2012) 8 SCC 148, held as follows:

“xxx xxx xxx

48. To sum up on the issue, it may be held that an application for taking additional evidence on record at a belated stage cannot be filed as a matter of right. The court can consider such an application with circumspection, provided it is covered under either of the prerequisite conditions incorporated in the statutory provisions itself. The discretion is to be exercised by the court judicially taking into consideration the relevance of the document in respect of the issues involved in the case and the circumstances under which such an evidence could not be led in the court below and as to whether the applicant had prosecuted his case before the court below diligently and as to whether such evidence is required to pronounce the judgment by the appellate court. In case the court comes to the conclusion that the application filed comes within the four corners of the statutory provisions itself, the evidence may be taken on record, however, the court must record reasons as on what basis such an application has been allowed. **However, the application should not be moved at a belated stage.**

xxx xxx xxx”

(Emphasis Supplied)

18. In the present case, the appellant has attempted to justify the producing of the original Sale Deed at this belated stage, during the pendency of the present appeal on the ground that the appellant has repaid his loan in the second week of December, 2019, and thereafter, received the original Sale Deed from the said third party after repaying the loan. Even though in the aforesaid application it is stated that the appellant repaid his loan in the second week of December, 2019, there is no satisfactory



explanation as to why the purported original Sale Deed was not produced before this Court till the year 2025.

19. The only explanation for the delayed filing of the application in question is that the same was filed on 24th December, 2019, and a Diary Number was generated towards the same, however, after filing of the application the matter was referred to mediation, and thereafter the appellant came to know that the application was not registered.

20. The said argument to circumvent the delay is not acceptable to this Court. Even if the appellant's argument is to be taken as true on the face of it, it is to be noted that *vide* order dated 11th May, 2022, it was recorded that there was no possibility of a settlement between the parties. Therefore, despite the mediation having failed in the year 2022, the appellant belatedly filed the application for taking on record the original Sale Deed after almost three years even from the date of the order recording failure of settlement talks. Therefore, the justification provided by the appellant, even if assumed to be true, makes it evident that the appellant has not exercised due diligence to bring on record the additional evidence, i.e., the purported original Sale Deed.

21. The Supreme Court in the case of *State of Karnataka and Another Versus K.C. Subramanya and Others*, (2014) 13 SCC 468, while holding that that the condition precedent for allowing a party to produce additional evidence at the stage of appeal under Order XLI Rule 27 of CPC, which is in the knowledge of the appellant, is that the appellant not just exercises due diligence before the appellate Court, but has to also show that he exercised due diligence before the Trial Court to produce the additional evidence or corroborate the validity of the same. The production of the additional



evidence that was in the knowledge of the appellant, since the institution of the suit, cannot be allowed upon the leisure and the will of the appellant. Thus, it was held as follows:

“xxx xxx xxx

4. However, we do not feel impressed with this argument and deem it fit to reject it in view of Order 41 Rule 27(1)(aa) which clearly states as follows:

*“27. (1)(a)****

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

*(b) ***”*

On perusal of this provision, it is unambiguously clear that the party can seek liberty to produce additional evidence at the appellate stage, but the same can be permitted only if the evidence sought to be produced could not be produced at the stage of trial in spite of exercise of due diligence and that the evidence could not be produced as it was not within his knowledge and hence was fit to be produced by the appellant before the appellate forum.

5. It is thus clear that there are conditions precedent before allowing a party to adduce additional evidence at the stage of appeal, which specifically incorporates conditions to the effect that the party in spite of due diligence could not produce the evidence and the same cannot be allowed to be done at his leisure or sweet will.

xxx xxx xxx

(Emphasis Supplied)

22. The appellant in the present case had several opportunities before the Trial Court and before this Court to produce the purported original Sale Deed. However, the appellant made no attempts before the Trial Court to bring on record the purported original Sale Deed or even corroborate the justification given by him that a third party was in possession of the same. The appellant could have overcome this burden by merely calling for the said third party to depose to the effect that the said Sale Deed was in



possession of the third party, which was not done.

23. Further, it is beyond the prerogative of this Court to supplement evidence filed before the Trial Court. When a party had ample opportunity to produce evidence and failed to do so or elected not to do so, the evidence cannot be admitted in appeal. Thus, the Supreme Court in the case of *Union of India Versus Ibrahim Uddin (Supra)*, held as follows:

“xxx xxx xxx

39. It is not the business of the appellate court to supplement the evidence adduced by one party or the other in the lower court. Hence, in the absence of satisfactory reasons for the non-production of the evidence in the trial court, additional evidence should not be admitted in appeal as a party guilty of remissness in the lower court is not entitled to the indulgence of being allowed to give further evidence under this Rule. So a party who had ample opportunity to produce certain evidence in the lower court but failed to do so or elected not to do so, cannot have it admitted in appeal. (Vide *State of U.P. v. Manbodhan Lal Srivastava* [AIR 1957 SC 912] and *S. Rajagopal v. C.M. Armugam* [AIR 1969 SC 101].)

xxx xxx xxx”

(Emphasis Supplied)

24. Moreover, the appellant has neither before the Trial Court, nor before this Court, brought on record any evidence or document to show that the subject property was indeed mortgaged by him or that even a loan was given to him in that regard by the third party. Therefore, a mere statement by the appellant, without any corroboration cannot be accepted by this Court.

25. Thus, it is apparent that the appellant has failed to exercise proper due diligence to bring on record the purported original Sale Deed.

26. Even if this Court traverses beyond the said finding, nevertheless, the document produced by the appellant is produced under dubious circumstances and even the validity and genuineness of the purported original Sale Deed is in doubt.



27. It is to be noted that the mother of the parties was alive during this period and expired only on 26th August, 2022, during the pendency of the present appeal. The appellant did not produce the alleged original Sale Deed when his mother was alive and has sought to place the same on record only now. The action of the appellant, being itself without any justification or explanation, profoundly supports the existence of doubtful circumstances in attempting to bring on record the purported original Sale Deed.

28. Another dubious circumstance is the fact that the appellant signed the pleadings in the present appeal in Hindi and also signed the pleadings before the Trial Court in Hindi, while his signatures on the purported Sale Deed are in English. The same creates a doubt as the appellant in his cross examination before the Trial Court has admitted that he cannot read English. On account of the doubtful and suspicious circumstances with regard to execution of the purported Sale Deed, this fact assumes importance. The deposition of appellant in this regard, reads as under:

“xxx xxx xxx

*I am studied upto 8th standard. **I cannot read English. I have signed Ex. PW-1/1 after having understood the contents.***

xxx xxx xxx”

(Emphasis Supplied)

29. It is also to be seen that there are major discrepancies in the Sale Deed filed before the Trial Court, which was the copy of the purported registered Sale Deed as produced by PW 2, and the original Sale Deed, which has been produced before this Court. The original Sale Deed as was produced before this Court was perused and a scanned copy of the same was retained by the Court and the purported original Sale Deed was returned to the appellant.

30. While it is an admitted fact that in the Sale Deed produced before the



Trial Court, the last page of the said Sale Deed did not contain the thumb impression or signature of the mother of the parties, however, in the purported original produced before this Court, the thumb impression and signature of the mother were there on the last page. No explanation has been given as to how and when the thumb impression or signature of the mother appeared subsequently on the last page of the purported Sale Deed, when the same was missing in the copy of the registered document. The last page of the copy of the purported Sale Deed, as produced before the Trial Court, is reproduced as under:

— 85 —

Page No...4...

3. That in consideration of the sale above amount the Vendor doth hereby transfer, convey, and assign the said property with all rights, title, and interests unto the Vendee.
4. That the Vendor hereby assured the Vendee that the said property is free from all sorts of encumbrances, such as Sale, Gift, Mortgage, lien, and decree etc. and there is no defect in their title and if proved otherwise then the Vendor shall be liable to indemnify the Vendee in full or part up to the extent of loss sustained by the Vendee.
5. That all dues and demands regarding the said property shall be paid and borne by the Vendor until the date of execution of this sale deed and hereafter shall be paid and borne by the Vendee.
6. That the heraty Vendee will be sole and absolute owner and will also be entitled to get mutation of the said property affected in her or name in all concerned office like house tax department, of M.C.D. Shabdare Zone, D.E.S.U. and Water Supply etc. on the basis of this Sale Deed as absolute owner.

In witness whereof the Vendor has signed on this deed on the date, month and year first above written.

WITNESSES:

11. 11. 1985
247 D. B. W. J.
11. 11. 1985
11. 11. 1985

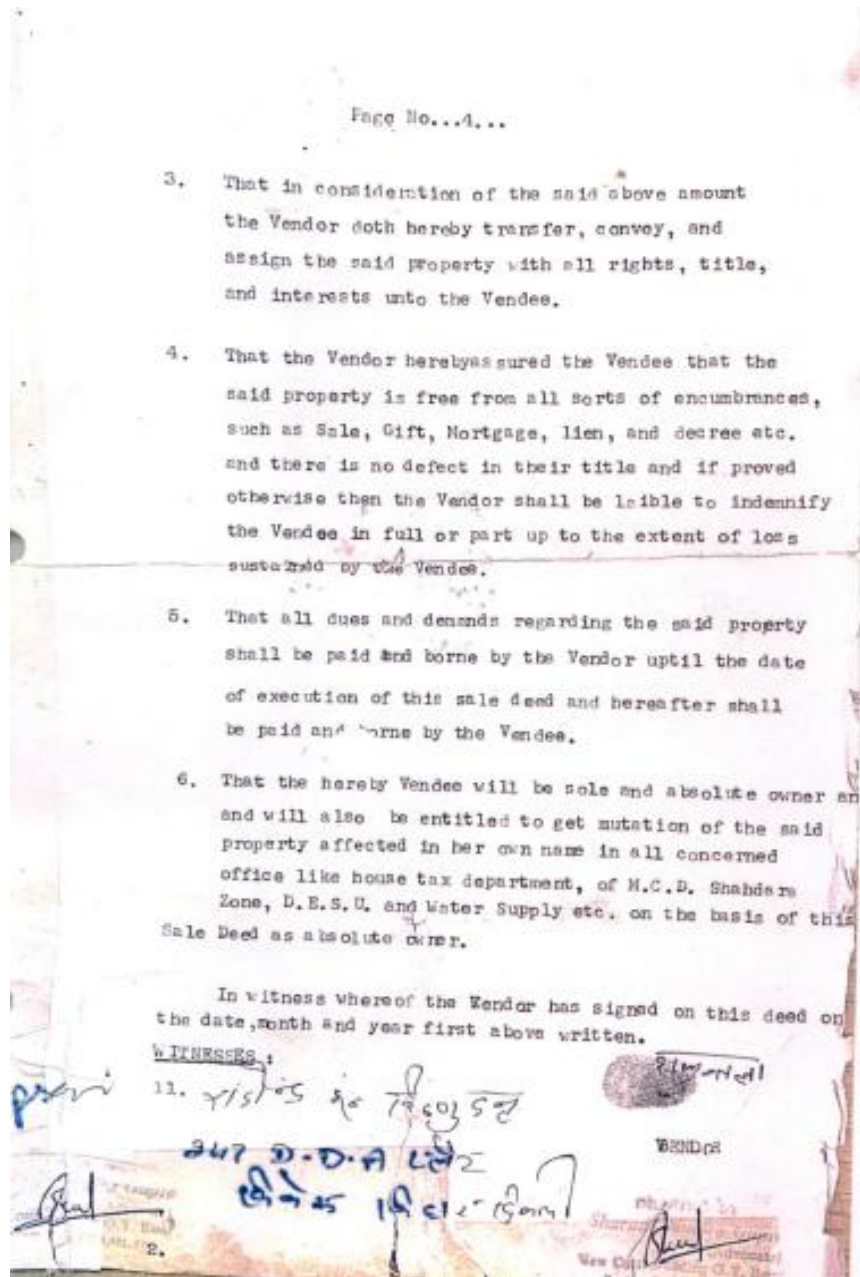
VENDOR
[Signature]

151

11. 11. 1985



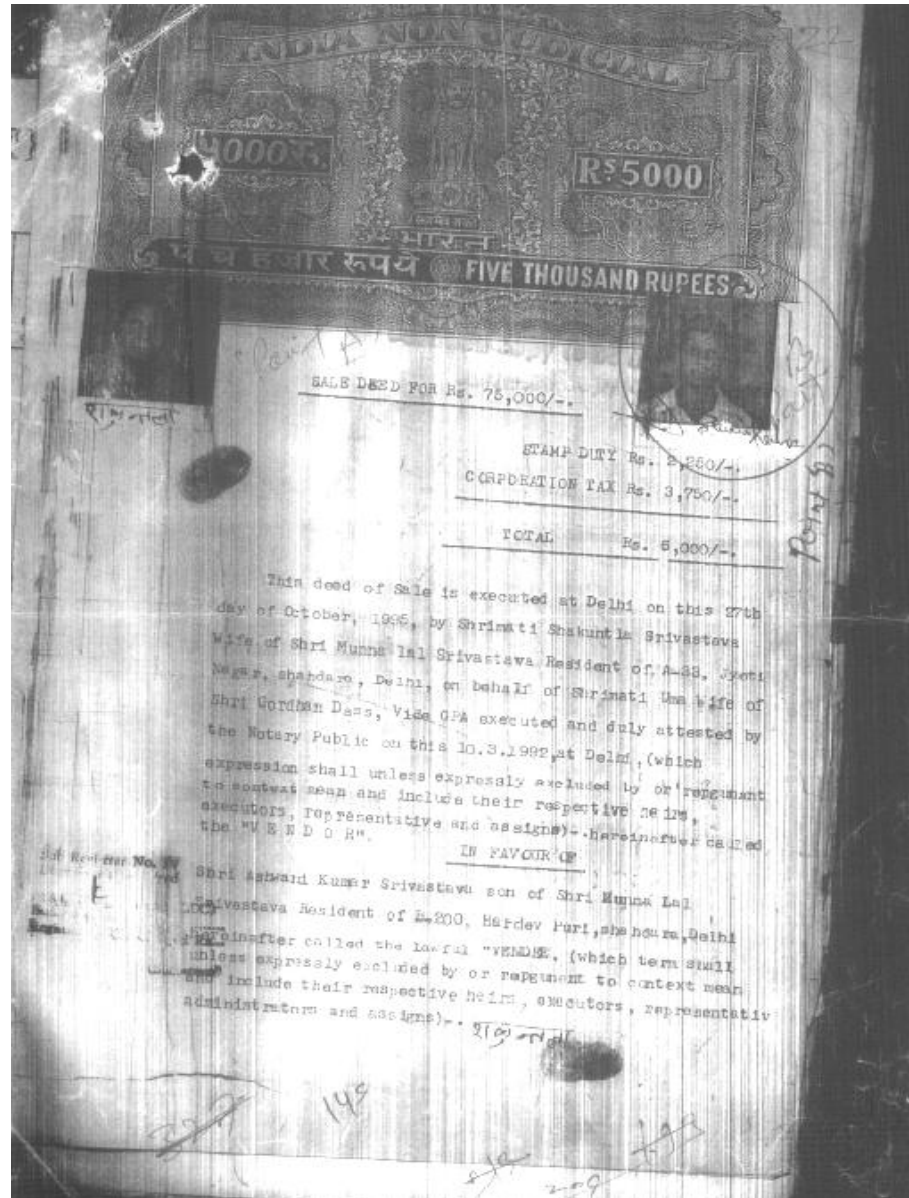
31. The last page of the purported original Sale Deed as produced before this Court, is reproduced as under:



32. Further, there is also discrepancy in the manner, signatures occur on the photograph of the appellant in the Sale Deed produced before the Trial Court and the purported original Sale Deed produced before this Court.



33. The first page of the Sale Deed produced before the Trial Court, is reproduced as under:



34. The first page of the purported original Sale Deed produced before this Court is reproduced as under:



17-6 5000Rs. 185

INDIA NON JUDICIAL

4000रु. R\$ 5000

पाँच हजार रुपये FIVE THOUSAND RUPEES

SALE DEED FOR Rs. 75,000/-

STAMP DUTY Rs. 8,950/-

CORPORATION TAX Rs. 1,050/-

TOTAL Rs. 6,000/-

This deed of Sale is executed at Delhi on this 27th day of October, 1995, by Shrimati Shakuntla Srivastava, Wife of Shri Munna Lal Srivastava Resident of A-33, Jyoti Nagar, Shahdara, Delhi, on behalf of Shrimati Uma Wife of Shri Girdhan Dass, Vide GPA executed and duly attested by the Notary Public on this 10.3.1992, at Delhi, (which expression shall unless expressly excluded by or repugnant to context mean and include their respective heirs, executors, representative and assigns)-hereinafter called the "V E N D O R".

IN FAVOUR OF

(Signature) Shri Ashwani Kumar Srivastava son of Shri Munna Lal Srivastava Resident of B-200, Hardev Puri, Shahdara, Delhi

hereinafter called the lawful "VENDEE". (which term shall unless expressly excluded by or repugnant to context mean and include their respective heirs, executors, representative administrators and assigns)-

35. Perusal of the aforesaid Sale Deeds, as produced before the Trial Court and before this Court, show that the signatures of the appellant in the Sale Deed produced before the Trial Court, occur on his photograph. However, the placement of the signatures of appellant on the purported original Sale Deed produced before this Court is different, and the signatures



start from left hand side of the photograph. Further, the letter 'A', with which the signature of the appellant begins, is outside of the photograph, on its left side. Thus, it is apparent that there are discrepancies, which in the facts and circumstances of the present case, raise doubts about the authenticity, and veracity of the alleged Sale Deed.

36. In addition, another glaring anomaly in the evidence of the appellant is that the appellant has failed to produce any document to establish that the respondent was his licensee, though, it had been averred by the appellant that he had permitted the respondent to stay in the subject property as a licensee. No license agreement or document or any other evidence was produced before the Trial Court which would suggest that the occupation of respondent in the subject premises was as a licensee of the appellant.

37. Further, it is the case of the appellant that he had paid a sum of Rs. 75,000/- in cash to his mother as consideration for sale of the subject premises. However, no evidence or documents as regards the payment of the said amount was produced before the Trial Court. No receipt or other evidence was produced to establish payment of any such amount to his mother regarding the alleged sale consideration. There is no proof on record as to how and in what manner, the money was paid in cash by the appellant to his mother, and what was the source of said amount purportedly paid in cash. Nothing has been averred or proved before the Trial Court in this regard.

38. Moreover, the appellant did not make any attempt to seek summons or depose parties, such as his mother, i.e., alleged seller/executant, attesting witness and the third party who was allegedly in possession of the purported original Sale Deed, all of whom could have verily attested to the veracity



and validity of the purported original Sale Deed. Therefore, in these facts and circumstances, the appellant has neither before the Trial Court, nor before this Court, been able to prove that he is the owner of the subject property.

39. Though the appellant claimed to be owner of the property, on a pointed query by this Court, during the course of hearing, learned counsel for the appellant admitted that the appellant did not stay in the subject property. This again raises uncertainty in the case put forth by the appellant regarding his alleged ownership, especially, considering the surrounding facts and circumstances of the present case.

40. By the impugned judgment, the Trial Court held that the appellant failed to prove his ownership over the subject property, by failing to discharge the burden of proof on him to establish the authenticity of the alleged Sale Deed. In this regard, the Trial Court held as follows:

“xxx xxx xxx

11. My findings on issues as under:-

Issue No.1 Whether plaintiff proves that he is owner of the suit property and that the ground floor portion was given under license to the defendant ? (OPP)

Issue No. 2. Whether the plaintiff proves that the defendant's license is terminated and defendant is liable to be evicted from the ground floor portion ? (OPP)

Burden to prove the said issue no.1 and 2 was on the plaintiff. To prove the ownership of the suit of property the plaintiff relied upon the sale deed dated 27.10.1995. However, bare perusal of the sale deed reveals that it has not been signed by Smt. Shakuntala Srivastava on the last page, where



two witnesses has put their signature and no satisfactory answer is given in this regard. I am of the considered opinion that putting signature on the said page has invalidate the authenticity of the registered sale deed in question. It is very unusual that witnesses have put their signature on the last page, however, executor/vendor has failed to do so. However, to prove the authenticity of the said sale deed, neither witnesses of the said sale deed was examined on behalf of plaintiff, nor any application was ever moved on behalf of plaintiff to summon the said witnesses. On asking on this point, it is very vaguely submitted on behalf of plaintiff that witnesses were not traceable. No satisfactory answer is given as to why he fails to examine any witness to the sale deed. Plaintiff also submits that he has issued the termination/legal notice to the defendant. In view of above discussion, I am of the considered opinion that proving this case, the plaintiff has to stand on his legs, he fails to prove his ownership over the suit property, hence, plaintiff miserably fails to discharge his burden. Hence, the said issue no.1 and 2 is decided against the plaintiff.

xxx xxx xxx

12. In view of above discussion, I am of the considered opinion that to prove this case, the plaintiff has to stand on his legs and plaintiff miserably fails to do so. He fails to discharge his burden of proving issue no.1 and 2. Hence, the suit of the plaintiff is hereby dismissed. No order as to costs. Decree sheet be prepared accordingly.

File be consigned to record room.

xxx xxx xxx”

41. Therefore, when the appellant has failed to prove his ownership over the subject property and has been unable to establish his ownership in any manner, the premise of filing the suit for possession is not fulfilled. The case of the appellant for seeking possession of the property in question was on the premise that the appellant was owner of the property in question. However, when the appellant has not been able to establish the said fact, there is no question of granting any relief to the appellant with regard to his suit for possession.

42. Resultantly, this Court finds no error in the findings of the Trial Court.



2025:DHC:7939



43. Considering the detailed discussion hereinabove, no merit is found in the present appeal. The same, along with the pending applications, is accordingly dismissed.

**MINI PUSHKARNA
(JUDGE)**

SEPTEMBER 10, 2025
Sk